



---

**OFFICE OF PUBLIC INSTRUCTION**

**PO BOX 202501  
HELENA MT 59620-2501  
www.opi.state.mt.us  
(406) 444-3095  
(888) 231-9393  
(406) 444-0169 (TTY)**

**Linda McCulloch  
Superintendent**

August 6, 2003

Attorney General Mike McGrath  
State of Montana  
Department of Justice  
215 North Sanders  
P. O Box 201401  
Helena, MT 59620-1401

Re: Request for Attorney General Opinion -- Transfers from Bus Depreciation Reserve Funds

Dear Attorney General McGrath:

Pursuant to Mont. Code Ann. §2-15-501(7), I hereby request your opinion concerning the following question:

May school district trustees transfer a portion or all of the cash balance from the district's bus depreciation reserve fund to another budgeted fund of the district under the provisions of Mont. Code Ann. §20-9-208(2) or close the fund to any other fund of the district under Mont. Code Ann. §20-9-201(3) regardless of whether the district has sold all its buses and submitted the proposition to voters under the conditions of Mont. Code Ann. §20-10-147(4)?

As with most school finance issues, this question involves a number of complicated school finance laws. As background, I provide the following.

Mont. Code Ann. §20-10-147 authorizes a school district that owns at least one bus to establish a "bus depreciation reserve fund" (the Bus Fund). The main purpose of the Bus Fund is to accumulate property tax receipts over the life of district-owned buses for the replacement of those buses in the future. (Periodic replacement of buses is recommended by the national pupil transportation industry as a necessary component of school bus transportation safety.)

According to Mont. Code Ann. §20-10-147, money in the Bus Fund may also be used to convert, remodel or rebuild a bus, or to purchase an additional bus. The Bus Fund is supported by a permissive (non-voted) local property tax levy. The amount of each year's levy is limited to twenty percent (20%) of the original cost of the bus. Over time the amount levied may not accumulate to more than one hundred fifty percent (150%) of a bus' original cost. The fund is defined as a budgeted fund under Mont. Code Ann. §20-9-201(1)(a).

Prior to October 1, 1997, section 147(4) allowed school district trustees to transfer any portion or all of the cash balance in the district's Bus Fund to any other fund of the district after

obtaining voter approval. In the 1997 Legislative Session, SB 244 (Ch 238 Montana Session Laws 1997) amended this section to add the condition that trustees must sell all of the district's buses before transferring money out of the fund.<sup>1</sup>

Another law, Mont. Code Ann. §20-9-201(3) allows trustees, "[e]xcept...as otherwise provided by law," to determine that a school fund "is inactive and will no longer be used" and close the fund. Prior to April 2001, section 201(3) allowed the trustees to close an "inactive" fund to the district's general fund only. Effective July 1, 2001, the Legislature, via SB 436 (Ch 480 Montana Session Laws 2001) amended this section to give trustees the discretion to close an inactive fund into any other fund of the district.

Mont. Code Ann. §20-9-208(2) authorizes certain types of transfers of money between funds of a school district, subject to other, more specific provisions regarding transfers in Mont. Code Ann. Title 20. Prior to July 2001, section 208(2) prohibited transfers between funds of the district "except as specifically provided by" Title 20. Effective July 1, 2001, the section was amended by SB 436 (Ch 480 Montana Session Laws 2001) to provide that "Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district" under one of several listed circumstances. Mont. Code Ann. §20-9-208(2). Transfers of budget authority and cash are allowed from one budgeted fund to another budgeted fund, providing that "Transfers may not be made with funds approved by the voters or with funds raised by a non-voted levy unless the transfer is within or directly related to the purposes for which the funds were raised." Mont. Code Ann. §20-9-208(2)(a)(i).

In 2002, OPI adopted Administrative Rules implementing the fund closure and cash transfer provisions in sections 20-9-201 and 20-9-208, as amended by SB 436. Pertinent Administrative Rules are:

Admin. R. Mont. 10.10.319(4) "Pursuant to 20-10-147, MCA when all the buses of a district have been sold or otherwise disposed of, trustees may close a bus depreciation reserve fund to any other fund of the district contingent on voter approval."

Admin. R. Mont. 10.10.320(4) "Pursuant to 20-10-147, MCA, when all the buses of a school district have been sold or otherwise disposed of, trustees may transfer any portion of the bus depreciation reserve fund balance to any other fund of the district contingent on voter approval."

In public comment to OPI's proposed rules noted above, the Montana School Boards Association (MTSBA) objected to the proposed rules' restriction on transfers from the bus depreciation fund (see "MTSBA Interpretations" below). OPI considered MTSBA's comments

---

<sup>1</sup> SB 244 amended 20-10-147(4) as follows: "Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

and concluded that the proposed rules were a correct interpretation of the statutes involved and of legislative intent. The rules were adopted and published as originally proposed. However, OPI inadvertently included a draft affirmative response to MTSBA's comment in the final adoption notice.<sup>2</sup> The inadvertent inclusion of draft language that did not accurately reflect the final Rule as adopted and created confusion, which OPI's legal staff regrets.

The sequence of Legislative amendments, coupled with the "except as otherwise provided by law" language, leaves OPI and MTSBA disagreeing on the operation and interplay of Mont. Code Ann. §§20-9-208 and 20-10-147.

OPI interprets section 20-10-147(4) to require that all the buses belonging to a district be sold prior to transferring tax receipts out of the Bus Fund, regardless of whether or not the fund is subsequently closed. By allowing transfers from the Bus Fund only after a district has sold all of its buses, the law ensures that taxes levied for bus replacement remain available for that purpose as long as the district has buses that may require future replacement. In other words, if money in the Bus Fund is transferred to another fund and expended while the district still owns buses, taxpayers may later be required to pay taxes a second time for replacement of those buses. Section 20-10-147 protects the taxpayer by preserving taxes raised for bus replacement as long as the potential need exists, and by allowing the voters to approve an alternative use of their tax dollars only after all buses have been sold.

Transfers under section 20-9-208 and fund closures under section 20-9-201 are subject to restrictions imposed by other sections of Title 20. Section 20-9-201(3) states that "Except...as otherwise provided by law," trustees may determine that a fund "is inactive and will no longer be used," and close the fund. Section 20-9-208(2) authorizes certain types of transfers of money between funds of a school district, "Unless otherwise restricted by a specific provision in" Title 20. We believe that the more specific laws limiting transfers between funds and the closure of

---

<sup>2</sup> In the Comment and Response part of the OPI Notice of Adoption of these Rules, this language was included:

"New Rule VII Closure of a School District Fund

COMMENT NO. 9: One commenter stated that this rule defines an inactive fund in a more restrictive manner than provided by law, in that the law provides that the decision on determining when a fund is inactive rests with the trustees. He recommends that the provision in (1) be stricken. The commenter also argued that (5) is more restrictive than Senate Bill 436 intended and should be removed.

RESPONSE: The Superintendent agrees that the determination of when a fund is inactive is a judgment left to trustees pursuant to 20-9-201(3)(a), MCA and amends New Rule VII accordingly. *The Superintendent believes that 20-10-147(4), MCA is limited to situations in which Trustees sell all the district's buses and does not necessarily address the closure of the bus depreciation reserve fund. Closure of such fund is now governed by 20-9-201(3), MCA.* (Emphasis added).

The italicized language was from an earlier, internal draft used for discussion purposes within OPI. It reflected the MTSBA arguments concerning the statutory changes and the proposed rules. It did not accurately describe or interpret the Rule as adopted.

funds prevail over the more general provisions of sections 20-9-208 and 20-9-201. Section 20-10-147 specifically limits transfers of money from the bus depreciation fund by imposing certain conditions.

In adopting Administrative Rules to implement the SB 436 amendments to sections 20-9-201 and 20-9-208, OPI attempted to clarify the relationship of those laws with other laws that govern school district transfers between funds. The rules list more specific provisions in Title 20 that prevail over the provisions in 20-9-201 and 20-9-208. See Admin. R. Mont. 10.10.319(4) and 10.10.320(4) above. These rules state OPI's interpretation that all transfers from the Bus Fund, including transfers upon fund closure, are subject to the conditions in section 20-10-147.

This professional disagreement between OPI and a constituency group with which we work closely and enjoy a good relationship involves the use of local property tax dollars levied for the replacement of school district buses. As an issue of pupil transportation safety and public funding for schools, it is a significant concern for the State. Consequently, I bring this question to the Attorney General for resolution.

If my staff or I can provide additional information, please do not hesitate to contact us. I look forward to and will follow your opinion in this matter.

Sincerely,

Linda McCulloch  
Superintendent

c: Lance Melton, Executive Director, MTSBA